

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JODI TAPPLY, et al.,

Plaintiffs,

v.

WHIRLPOOL CORPORATION,

Defendant.

Case No. 1:22-cv-758

HON. JANE M. BECKERING

ORDER

Pending before the Court in this putative class action is Plaintiffs’ “Motion to Compel Rule 26(f) Discovery Conference and Whirlpool’s Rule 26(A) Initial Disclosures” (ECF No. 33). For the reasons that follow, the Court denies Plaintiffs’ motion.

I.

Plaintiffs initiated this action on August 19, 2022 (ECF No. 1). On November 14, 2022, Plaintiffs filed an Amended Complaint (ECF No. 13). On December 20, 2022, Defendant filed a Motion to Dismiss (ECF No. 17), seeking dismissal of Plaintiffs’ Amended Complaint. As of March 16, 2023, following the stipulated briefing schedule of the parties (*see* ECF Nos. 15, 16, 24, & 25), the motion to dismiss is fully briefed (ECF Nos. 26, 27 & 32).

Plaintiff filed the instant motion to compel six days later, on March 22, 2023, seeking an order requiring Defendant “to participate in a Federal Rule of Civil Procedure 26(f) conference at a mutually agreeable date and time” within 10 days of any order from the Court on the instant motion to compel; requiring Defendant to “make its initial disclosures at or within 14 days of the parties’ Rule 26(f) conference;” and requiring Defendant to “respond to Plaintiffs’ Requests for

Production of Documents, served on March 8, 2023, within 30 days of the parties’ Rule 26(f) conference” (ECF No. 34 at PageID.609). Defendant filed a response in opposition (ECF No. 36).

II.

Under Federal Rule of Civil Procedure 26(d)(1), parties “may not seek discovery from any source before [they] have conferred as required by Rule 26(f) ... or by court order.” FED. R. CIV. P. 26(d)(1). Because Defendant’s motion to dismiss is pending, the Court has not yet noticed a Rule 16 Scheduling Conference. *See* FED. R. CIV. P. 26(f)(1) (requiring parties to “confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b)”); *see also* FED. R. CIV. P. 16(b) (“[t]he judge must issue the scheduling order as soon as practicable, ... unless the judge finds good cause for delay ...”).

Courts have considered requests for early discovery, such as the instant request, under a “good cause” or “reasonableness” standard. *See* ECF No. 36 at PageID.645–650 (citing cases, e.g., *Simpson v. Doe #1-2*, No. 21-10877, 2021 WL 8084521, at *1 (E.D. Mich. May 7, 2021) (“Although not explicitly required under the Federal Rules of Civil Procedure or binding caselaw, when reviewing a request for early discovery, courts often consider whether the requesting party has demonstrated ‘good cause[,]’” such as, for example, “when the discovery requested is necessary to determine an opposing party’s identity”) (citations omitted); *Castillo v. Whitmer*, No. 1:20-cv-751, 2020 WL 11036303, at *1 (W.D. Mich. Aug. 21, 2020) (noting that courts “balanc[e] the need for expedited discovery, in the administration of justice, against the prejudice to the opposing party, and consider[] the entirety of the record to date and the reasonableness of the request in light of the surrounding circumstances”) (citation omitted)); *see also, e.g., Gant v. Ford Motor Co.*, No. CV 19-12533, 2020 WL 12655614, at *1–2 (E.D. Mich. Apr. 6, 2020) (noting that the court was “disinclined to order [the defendant] to embark” on “largescale, time-consuming,

expensive discovery” in light of pending motion to dismiss where “discovery requests could become moot or significantly narrowed in scope”).

Having reviewed the record and the parties’ submissions, and for the reasons more fully set forth by Defendant (*see* ECF No. 36 at PageID.645–650), the Court denies Plaintiffs’ motion to compel. Specifically, the Court agrees with Defendant that Plaintiff has not demonstrated good cause for the broad discovery sought by Plaintiffs at this time while Defendant’s motion to dismiss remains pending. Accordingly,

IT IS HEREBY ORDERED that Plaintiffs’ Motion to Compel (ECF No. 33) is DENIED.

Dated: April 7, 2022

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge